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Item 9 of the agenda
Working Group on the Administration of Justice

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Report of the sessional working group on the administration of justice

Chairman-Rapporteur: Mr. Louis Joinet

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Introduction

1. In accordance with the decision taken by the Sub-Commission on 4 August 1998, a sessional working group of the Sub-Commission on the administration of justice held its first meeting on 4 August 1998. The following experts were appointed as members of the working group on 4 August 1998: Mr. Héctor Fix Zamudio (Latin America), Mr. Rajendra Kalidas Wimala Goonesekere (Asia), Mr. Louis Joinet (Western European and other States), Mr. Joseph Oloka-Onyango (Africa) and Mr. Teimuraz Ramishvili (Eastern Europe).

2. The working group held three public meetings on 4, 7 and 17 August, and two additional meetings, also public but without interpretation, on 11 and 12 August 1998.

3. A representative of the Office of the High Commissioner for Human Rights opened the session of the working group.

4. The working group designated Mr. Louis Joinet as Chairman-Rapporteur for its 1998 session.

5. The following members of the Sub-Commission not members of the working group also took part in the discussion: Mr. Alfonso Martínez (1st, 2nd and 5th meetings), Mr. Eide (1st meeting), Mr. Guissé (1st meeting), Ms. Hampson (1st and 2nd meetings), Mr. Kartashkin (2nd and 5th meetings), Mr. Park (2nd and 5th meetings), Mr. Sik Yuen (2nd and 5th meetings), Mr. Sorabjee (1st meeting), Ms. Warzazi (1st and 2nd meetings), Mr. David Weissbrodt (1st, 2nd, 3rd, 4th and 5th meetings), Mr. Yokota (2nd meeting) and Mr. Zhong (1st, 2nd and 5th meetings).

6. The following non-governmental organizations also made statements: Amnesty International (2nd meeting) and the International Commission of Jurists (2nd and 5th meetings).

7. The working group had before it the following documents relating to its provisional agenda:

Report of the sessional working group on the administration of justice on its 1997 session (E/CN.4/Sub.2/1997/21);

Expanded working paper submitted by Mr. Stanislav Chernichenko in accordance with decision 1996/116 of the Sub-Commission on recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime (E/CN.4/Sub.2/1997/29);

Working paper submitted by Mr. Miguel Alfonso Martínez concerning the study of the issue of the privatization of prisons (E/CN.4/Sub.2/1991/56);

Outline prepared by Ms. Claire Palley pursuant to Sub-Commission decision 1992/107 on the possible utility, scope and structure of a special study on the issue of privatization of prisons (E/CN.4/Sub.2/1993/21);

Note by the secretariat on juvenile justice (E/CN.4/Sub.2/1996/WG.1/CRP.1);

Conference room paper prepared by the secretariat on habeas corpus, amparo and similar procedures as a non-derogable right (E/CN.4/Sub.2/1998/WG.1/CRP.1);

Note by the secretariat on follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance containing the text of a draft convention on the subject (E/CN.4/Sub.2/1998/WG.1/CRP.2);

Conference room paper prepared by Mr. El-Hadji Guissé on issues related to the deprivation of the right to life (E/CN.4/Sub.2/1998/WG.1/CRP.3).

Adoption of the agenda

8. At its 1st meeting, the working group considered the provisional agenda. At the suggestion of the Chairman-Rapporteur, based on formal and informal consultations with other members of the working group, the working group decided to adopt the following agenda:

1. Follow-up measures to the Declaration on the Protection of all Persons from Enforced Disappearance.

2. Issues related to the deprivation of the right to life, with special reference to:

   (a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

   (b) Summary, arbitrary and extrajudicial executions.

3. Habeas corpus as a non-derogable right [and as one of the requirements for the right to a fair trial].

4. Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide.

5. Juvenile justice.

6. Privatization of prisons.

7. Recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime.

8. Provisional agenda for the next session.

9. Adoption of the report of the working group to the Sub-Commission.

I. FOLLOW-UP MEASURES TO THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

9. For the benefit of newly-elected members of the Sub-Commission and those participating in the work of the working group for the first time, the Chairman-Rapporteur, Mr. Joinet, went over the background to the preliminary draft international convention for the protection of all persons against forced disappearance (E/CN.4/Sub.2/1998/WG.1/CRP.2) (see annex).

10. The drafting of a convention on forced disappearance was an initiative dating from the 1980s. The Sub-Commission had first asked the working group to prepare a draft declaration on enforced disappearance. After being submitted to the Sub-Commission and then to the Commission on Human Rights and the Economic and Social Council, the draft had been adopted by the General Assembly in its resolution 47/133 of 18 December 1992 entitled "Declaration on the Protection of All Persons from Enforced Disappearance". In June 1994, the General Assembly of the Organization of American States had itself adopted the Inter-American Convention on Forced Disappearance of Persons. The persistence of the practice of enforced disappearance, its complexity and its extreme gravity as a crime meant the need for a universal convention on the question had taken on increasing importance, not to say urgency.

11. At the request of the working group, Mr. Joinet had submitted to it, at its forty-eighth session, a preliminary draft convention in the form of a working paper. However, no text had been proposed for the part concerning the monitoring mechanism, as the Chairman-Rapporteur had taken the view that, given the importance of the question, it would be preferable to wait for the working group itself to consider the various options and decide on the main outline. As a result, the working group had considered only the first part of the preliminary draft and decided to continue consideration of the remaining part at its forty-ninth session (see E/CN.4/Sub.2/1996/16). The working group also requested Mr. Joinet to make the necessary contacts to determine the conditions under which the Centre for Human Rights could organize a meeting of experts on the preliminary draft. Failing that, the Rapporteur would contact Governments and non-governmental organizations with a view to organizing such a meeting.

12. As a number of the difficulties encountered would have prevented the holding of such a meeting within a reasonable time, the Chairman-Rapporteur had approached Amnesty International and the International Commission of Jurists, which had kindly agreed to organize the meeting. The meeting had been held on 16 and 17 June 1996 with the Chairman-Rapporteur attending, together with the persons responsible for the thematic procedures concerned, namely, the Special Rapporteur on the question of torture, Mr. Nigel Rodley (written contribution); the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Ndiaye; the Vice-Chairman of the Working Group on Arbitrary Detention, Mr. Roberto Garretón; and a member of the secretariat of the Working Group on Enforced or Involuntary Disappearances. The meeting had also been attended by a representative of the International Committee of the Red Cross (ICRC) and experts who had taken part in the drafting of the

Inter-American Convention on Forced Disappearance of Persons. The short time available for the meeting meant that not all the preliminary draft could be considered.

13. At its forty-ninth session, the working group was informed by the Chairman-Rapporteur of the difficulties encountered and it was decided to postpone consideration of the preliminary draft until the working group's fiftieth session.

14. In November 1997, a meeting on the preliminary draft convention, organized by Amnesty International, the International Commission of Jurists, the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), and the International Service for Human Rights, had been held in Geneva and attended by the Chairman-Rapporteur. In addition to the non-governmental organizations invited, and with the Chairman-Rapporteur of the working group, the meeting had been attended by a member of the Working Group on Enforced or Involuntary Disappearances (Mr. Jonas Foli), the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, representatives of ICRC and experts who, in the past, had taken part in the drafting of the Inter-American Convention on Forced Disappearance of Persons.

15. The Chairman-Rapporteur recalled that the preliminary draft submitted to the working group at the current session was based largely on the Declaration on the Protection of All Persons From Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly as far as the monitoring mechanism was concerned. Particular care had been taken to ensure that the text of the preliminary draft departed from the wording of the Declaration and the Convention only to take account of the special nature - which had often been emphasized, particularly by the Working Group on Enforced or Involuntary Disappearances - of the practice of enforced disappearance in the light of innovative proposals intended mainly to respond to the international considerations involved in such protection. Mr. Joinet explained that, in preparing the preliminary draft, he had also taken into consideration: (a) the International Covenant on Civil and Political Rights; (b) the Convention on the Elimination of All Forms of Discrimination against Women; (c) the Convention on the Rights of the Child; (d) the Convention on the Prevention and Punishment of the Crime of Genocide; (e) the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; (f) the Convention relating to the Status of Refugees; (g) the Code of Conduct for Law Enforcement Officials; (h) the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; (i) the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 8 (3) (E/CN.4/1998/42, annex II); and (j) at regional level, the Inter-American Convention on Forced Disappearance of Persons, adopted by the Organization of American States in June 1994.

Preliminary draft of the international convention on the protection of all persons from forced disappearance

16. The Chairman-Rapporteur suggested that the working group should first take up the part of the draft convention which had not yet been considered,

concerning the structure, membership and functioning of an implementation and monitoring committee. In view of the presence of a number of newly elected members of the Sub-Commission, the group then decided to re-examine the first part of the preliminary draft by holding additional meetings, which would be public but without interpretation, and to use the second reading to ensure consistency of the substance and, in particular, of the terms used, in the English, French and Spanish versions of that part of the text. The general comments and amendments which produced a consensus at those meetings concerned the following points:

General comments

17. Mr. Weissbrodt expressed concern at the increasing number of reporting procedures of which this draft convention provided an additional one. He mentioned that States already had too many reporting obligations and were considering consolidating treaty reporting obligations rather than focusing on the establishment of new reporting mechanisms. Mr. Weissbrodt also expressed his concern with regard to the means by which the Commission on Human Rights was going to take the draft convention forward in the light of the large number of new drafting exercises it had already been entrusted with, and that it might therefore be useful to have an indication as to whether the Sub-Commission would be ready to undertake the drafting of the convention.

18. With reference to the next steps to be taken at Commission level, Mr. Sang Yong Park wondered whether the view of Governments, other treaty bodies and intergovernmental organizations should be sought. Mr. Zhong Shukong added firstly that draft conventions were a very serious undertaking and would be legally binding and therefore the views of all Member States should be solicited and secondly that the draft convention should now be transmitted to the Commission on Human Rights for comments by member States and relevant intergovernmental and non-governmental organizations. The Chairman-Rapporteur agreed with Mr. Zhong Shukong. He confirmed that States would of course be consulted, but on the following basis: if the Sub-Commission approved in plenary the preliminary draft adopted by the working group, it could decide to transmit it to the Commission on Human Rights for consideration. The Commission would then itself consult Governments, in accordance with its usual practice. That would be the way in which communication would take place, in accordance with the wish expressed by Mr. Zhong Shukong.

Substance/general comments*

19. In order to ensure consistency of the term "forced disappearance" referred to throughout the text of the draft convention, it was suggested that the wording of the title be changed from "enforced disappearance" to "forced disappearance". Mr. Joinet pointed out that the title of the preliminary draft had been chosen to ensure consistency with the terminology used in the Declaration on the Protection of All Persons from Enforced Disappearance, as well as in the Inter-American Convention on Forced Disappearance of Persons.

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* The text of the draft convention as adopted appears in the annex.

20. The Chairman-Rapporteur, after verifying the terms used in the Declaration on the Protection of All Persons from Enforced Disappearance, noted the use of the words "crime" in the French version, "offence" in the English version and "delito" in the Spanish version. A number of speakers suggested that "crime" should be used in all three versions, while others proposed the term "infraction criminelle" in the French version, or "delito" or "crimen de lesa humanidad" in the Spanish version. The Chairman-Rapporteur suggested keeping to the terminology of the Declaration so as to facilitate the adoption of the draft convention by the Commission on Human Rights.

Preamble

21. Mr. Sik Yuen proposed that the words "offence to" should be replaced by "outrage to".*

Article 1

22. Mr. Joinet proposed that the words "especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to in paragraph 1 of this article" should be inserted at the end of paragraph 2.

Article 2

23. Ms. Hampson proposed inserting after the words "the offence of forced disappearance", the words "or of any constituent element of the offence", and inserting the following sentence after the words "shall be punished": "The perpetrators or other participants in a constituent element of the offence as defined in article 1 of the Convention should be charged with a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed."

24. In order to ensure consistency between the languages, it was suggested that in article 2 (b), the word "association" be replaced with the word "collusion" in the English version.

Article 3

25. Ms. Hampson suggested that current article 3 be renumbered article 3 (1) and new article 3 (2) inserted to read as follows: "Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or widespread practice of forced disappearances, however limited the character of their participation."

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* All the proposals referred to in this section were adopted by the working group by consensus.

Article 5

26. Ms. Hampson proposed inserting in paragraph 1, line 3, after the words "in article 1 of this Convention" the words "and to define a crime against humanity, as defined in article 3 of this Convention, as a separate offence". She also suggested replacing the words "its extreme gravity" with the words "their extreme gravity".

27. Ms. Hampson suggested deleting paragraph 3.

Article 6

28. In paragraph 1 (b), Ms. Hampson proposed deleting the words "and if any State does not proceed to extradite them" and inserting after the words "where the offence took place" the words "unless the State extradites or transfers them to an international criminal tribunal".

Article 7

29. In paragraph 1 Ms. Hampson suggested inserting, after the words "a person suspected of having committed" the words "a forced disappearance or".

30. In paragraph 1, it was suggested that "continued" should be inserted after the words "necessary measures to ensure the", and the words "in the territory" after the words "of that person".

Article 9

31. In paragraph 3, Mr. Joinet suggested that the word "conclude" be deleted and replaced with the word "know" and the words "might be committed" be replaced with the words "was about to be committed".

Article 10

32. Mr. Joinet suggested replacing the words "without prejudice" in paragraph 2 by "subject".

33. In paragraph 3, Mr. Joinet suggested inserting after the words "from criminal responsibility" the words "including where" and deleting the words "this provision shall be applied even if".

Article 11

34. Ms. Hampson suggested that paragraph 1 end after the words "investigated by that authority" and paragraph 2 begin with the words "Whenever there are grounds to believe" and that the remaining paragraphs be renumbered accordingly.

Article 12

35. Mr. Joinet proposed that, in the French version of paragraph 5, the word "parties" should be inserted after "Les Etats" and "punissable d'extradition" should be replaced by "susceptible d'extradition".

Article 15

36. Mr. Joinet proposed replacing "Aucun Etat" in paragraph 1 by "Aucun Etat partie" and inserting the word "Party" after the words "No State" in the English version.

37. Ms. Hampson suggested inserting the words "or any other serious human rights violation" after "in danger of being subjected to forced disappearance" in paragraph 1.

Article 16

38. The Chairman-Rapporteur proposed reverting to the earlier wording which was more in keeping with the concepts of crime against humanity and statutory limitation. In paragraph 1, statutory limitation applied to crimes of forced disappearance which constituted crimes against humanity. Paragraph 2 referred to crimes of forced disappearance which did not, under article 3 of the Convention, constitute crimes against humanity, and for which the prescription period was to be the longest period laid down in national legislation.

Article 17

39. In paragraph 1, it was suggested that the words "prior to their trial, and where applicable, conviction" should be inserted after the words "from any amnesty measure or similar measures".

40. Mr. Joinet proposed deleting from paragraph 2 the words "which may only be granted for humanitarian reasons after conviction of the person responsible for any of the acts referred to in article 2 of this Convention".

Article 20

41. In paragraph 1, it was suggested that the brackets should be deleted.

Article 21

42. In paragraph 4, Ms. Hampson suggested inserting, after the words "that are recognized", the words "binding upon".

43. In paragraph 6, Mr. Joinet suggested deleting the words "national or international".

Article 22

44. Ms. Hampson suggested that the words "any person deprived of liberty" in paragraph 1 be replaced with the words "where any person is deprived of liberty, he or she".

45. After paragraph 3, Ms. Hampson suggested inserting an additional paragraph which would read as follows: "States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this Convention, States Parties shall make it a criminal offence for the

responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is or should be known to be inaccurate in the custody record."

Article 23

46. Mr. Joinet proposed that the words "in a manner" should be replaced by "according to a procedure".

Article 24

47. In paragraph 4, Ms. Hampson suggested inserting, after the words "referred to in article 2", the words "and 3".

Article 25

48. The Chairman-Rapporteur recalled that, in all United Nations human rights Conventions providing for a monitoring mechanism such as a committee, procedural arrangements were entrusted to the Secretary-General of the United Nations as depositary of the instrument in question. In the preliminary draft, the relevant provisions were:

> Article 25, paragraphs 3, 4, 5 and 7 (procedure for the election of members of Committee);
>
> Article 26, paragraphs 3 (material assistance) and 4 (convening of the initial meeting);
>
> Article 27, paragraphs 1 and 2 (procedure for the submission of reports by States parties).

49. During the preparation of the preliminary draft, a number of NGOs had expressed the view that, as the High Commissioner for Human Rights was responsible in particular for the question of human rights within the United Nations system, that role should now be assigned to the Office of the High Commissioner. With the agreement of the working group, the Chairman-Rapporteur had held consultations on the legal and other aspects of this question. As a result, the legal implications of this innovative proposal were to be considered in more detail. For example, the depositary of the instrument, as in fact provided in article 39, paragraph 1, of the preliminary draft, was the Secretary-General and not the High Commissioner for Human Rights. This raised the question of coordination between the two mandates which it would be premature to resolve in the consideration of a draft convention, since a general question of principle was involved. Mr. Joinet therefore proposed reverting to the wording currently in effect and replacing the words "High Commissioner for Human Rights" by "Secretary-General of the United Nations" in paragraphs 3 (second line), 4 (third and fifth lines) and 7 (first line) of article 25, and in article 26, paragraphs 3 and 4 (first lines), and article 27, paragraphs 1 (first and second lines) and 2 (first line). It was so decided.

50. In paragraph 1 Ms. Hampson, Mr. Kartashkin, Mr. Goonesekere, Mr. Oloka-Onyango, Mr. Sang Yong Park and Mr. Weissbrodt discussed the interpretation of the words "civil servant" at line 6, the status of which differed from one country to the next. The working group adopted the proposal of Mr. Sik Yuen that the words "the status of civil servant or any other" be deleted from the text so that the sentence reads as follows: "Membership of the Committee is incompatible with any other post or function subject to the hierarchical structure of the executive authority of a State Party."

51. In paragraph 2, line 3, Mr. Weissbrodt proposed that the word "one" be deleted and replaced with the word "three" following the example of the European Court of Human Rights. Mr. Alfonso Martínez stressed the desirability that the State party be in a position to have the option, rather than the obligation, to nominate "up to three persons". Mr. Sik Yuen and Mr. Zhong Shukong made comments in this connection. The Chairman-Rapporteur suggested the working group should opt for the text of article 29 of the International Covenant on Civil and Political Rights, which stipulated "Each State Party to the present Covenant may nominate not more than two persons."

52. In paragraph 4, line 8, Mr. Yokota suggested that the word "relevant" be inserted before the words "intergovernmental organizations" and Mr. Weissbrodt suggested that it be inserted before the words "non-governmental organizations".

53. In paragraph 6, Mr. Yokota suggested inserting the words "or her" after the words "perform his" and the words "which nominated him".

Article 26

54. Mr. Joinet suggested that, in paragraphs 3 and 4, the words "High Commissioner for Human Rights" should be replaced by "Secretary-General of the United Nations".

Article 27

55. Mr. Joinet also proposed replacing the words "en question" in the French version of paragraph 1 by "concerné".

56. In paragraph 1, Ms. Hampson suggested replacing the words "the Committee may make a visit to the territory of that State Party" with the words "the Committee may make a visit to the territory under the control of that State".

57. In paragraph 1, Mr. Yokota proposed to insert the following sentence after the second sentence: "The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and visiting such places and meeting with such persons as may be required for carrying out the mission of the visit."

Article 28

58. In paragraph 1, Ms. Hampson suggested inserting after the words "in the territory" the words "under the control of".

59. In paragraph 3, Ms. Hampson suggested inserting, after the words "may include a visit to its territory" the words "under its control", and inserting after the words "include visits to the territory" the words "under the control".

60. Mr. Joinet made a proposal concerning paragraph 4 which did not affect the English text.

Article 30

61. Mr. Joinet proposed replacing "petitions" in paragraph 1 by "communications" and changing "communication" in the first line of paragraph 2 to "communications".

Article 36

62. In paragraph 1, Mr. Kartashkin expressed concern that by giving States the option to make reservations concerning the articles which provided for the supervisory mechanism, the effectiveness of the entire draft convention would be called into question. He proposed that no reservations be possible concerning the articles referring to the competence and functioning of the Committee. Ms. Hampson suggested allowing for reservations under article 30 only, providing for the submission of communications to the Committee concerning a violation of the provisions contained in the draft convention. Mr. Sang Yong Park and Mr. Weissbrodt were also in favour of retaining the clause on reservations in conformity with the text of the draft convention.

63. The Chairman-Rapporteur suggested a compromise text to take account of the discussion on the advisability or otherwise of allowing for reservations in article 36 and of maintaining some degree of flexibility in that respect so as to simplify ratification for some States. The text was drawn from article 20 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination.

64. The working group, after approving the amended draft as a whole by consensus, requested that the Sub-Commission should transmit the revised draft convention, with the comments and suggestions contained in this report, to the Commission on Human Rights.

II. ISSUES RELATED TO THE DEPRIVATION OF THE RIGHT TO LIFE

65. In accordance with the request made by the working group at the Sub-Commission's forty-ninth session, Mr. Guissé submitted a follow-up report on the evolution of the death penalty (E/CN.4/Sub.2/1998/WG.1/CRP.3). He reported on the progress made in the de jure and de facto abolition of the death penalty throughout the world. The information provided by Amnesty International and the International Abolitionist Federation showed that 54 countries had now legally abolished the death penalty; 15 countries had abolished it except for war crimes; and 27 had not imposed it for more than 10 years. He also stressed that the death penalty had been maintained in 97 States. It was applied to vulnerable groups, such as minors, pregnant women, mothers of young children, the mentally ill, the mentally disabled and the elderly. In order to encourage the abolition of the death penalty, he

referred to practices guaranteeing a fair trial, such as appointment of counsel by the courts, personality investigations and the abolition of special courts. It would be worthwhile considering, at both national and international levels, possible substitutes for the death penalty in order to assist countries wishing to abolish it.

66. The representative of the Office of the High Commissioner for Human Rights highlighted the need to coordinate the initiatives undertaken on the death penalty by the respective United Nations organs and bodies. He mentioned in particular the quinquennial report on the question of capital punishment prepared by the Centre for International Crime Prevention, the yearly supplement to this quinquennial report prepared by the Office of the High Commissioner, the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the consideration of article 6 of the International Covenant on Civil and Political Rights by the Human Rights Committee. However, he mentioned that the question arises as to which was the preferable forum for consideration of the death penalty issue. In this regard it should be noted that discussing the issue within the context of human rights, and not just criminal justice aspects, could be considered as a positive step towards its abolition.

67. Mr. Alfonso Martínez mentioned that the question of the death penalty was being considered by United Nations bodies in Geneva and Vienna. The bodies in Geneva were focusing on ways by which the death penalty was affecting human rights and more specifically the right to life, whereas those in Vienna were of a more technical and legal nature. There was therefore no duplication of the activities of the respective forums, and means should be sought to ensure complementarity of the activities.

68. Mr. Ramishvili mentioned that it might be useful to reflect the work the Council of Europe was undertaking on the death penalty in Mr. Guissé's report. This would highlight the difficulties encountered with regard to the abolition of the death penalty in that part of the world and the way it affected the criminal process. The Chairman-Rapporteur asked the secretariat to provide Mr. Guissé with the aforementioned Council of Europe documents.

69. Mrs. WARZAZI suggested that the working group should consider the plight of children whose mothers had been executed. While working for the gradual abolition of the death penalty, it should clearly define the cases for which the death penalty was required.

70. Mr. Sorabjee stated that the death penalty should be abolished in view of the miscarriages of justice which occurred, the use of the death penalty for political ends, recourse to special courts which failed to guarantee due process of law and, above all, in view of the fact that the execution of a death sentence was irrevocable.

71. Mr. Oloka-Onyango agreed with Mr. Sorabjee that in view of the discriminatory manner in which the death penalty was being applied, often disproportionately affecting individuals on the basis of race, ethnicity and economic status, abolition was the only appropriate course of action. He drew

attention to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which he suggested the Sub-Commission should encourage States to sign.

72. Ms. Hampson recalled the danger of wrongful convictions, which were all the more likely in cases in which individuals were convicted of terrible criminal offences compounded with pressure of public opinion to punish the perpetrators. She stressed that it was an obligation of States to educate public opinion to fully respect human rights, including the right to life, and due process of law, in conformity with article 6 (6) of the International Covenant on Civil and Political Rights which states that nothing shall be invoked to delay or to prevent the abolition of capital punishment by any State party.

73. Mr. Zhong Shukong highlighted that the abolition of the death penalty should be considered a gradual process, as long as it was carried out in conformity with the rule of law, and that it was important to bear in mind country-specific conditions which might influence the timetable for the abolition of the death penalty.

74. Mr. Alfonso Martínez suggested that paragraphs 18 to 22 of Mr. Guissé's report reflected also an increase in the recourse to the death penalty in cases in which the author of the offence belonged to a vulnerable group and the victim not, particularly in cases when the author was a Black or an immigrant from a third world country.

75. The Chairman-Rapporteur of the working group thanked Mr. Guissé for his excellent report and suggested that he should submit an updated follow-up report at the next session. That report should cover:

The approach specified in Commission on Human Rights resolution 1998/8;

The measures taken by various United Nations bodies, both in Geneva and in Vienna;

Progress in the signing or ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

Information provided by NGOs on the situation of women and minors sentenced to death or executed.

76. Mr. Guissé thanked the working group for its helpful suggestions and agreed to submit a follow-up report on this important question at the following session.

III. HABEAS CORPUS AS A NON-DEROGABLE RIGHT

77. Mr. Weissbrodt recalled that in 1993 the Sub-Commission had requested the Secretary-General to send to the Human Rights Committee the draft third optional protocol to the International Covenant on Civil and Political Rights. The Sub-Commission suggested the advisability of elaborating such a protocol to make the right to a fair trial, habeas corpus and amparo non-derogable

rights. The Committee responded that perhaps the developing jurisprudence under article 4, which dealt with non-derogable rights contained in the Covenant, and other jurisprudence on articles 9 and 14 would be a more effective way of achieving those objectives. The Sub-Commission suggested that in accordance with decision 1997/115 the Committee consider preparing a revised general comment on article 4 of the Covenant, reaffirming the developing consensus that habeas corpus and the related aspects of amparo should be considered as non-derogable rights. The Committee agreed to this proposal and began a very early process of revising its existing General Comment 5 on article 4 of the Covenant. In his view, this development also demonstrated an increased cooperation between the Sub-Commission and treaty bodies and thus responded to requests made by the Commission on Human Rights to the Sub-Commission during the last three years to enhance cooperation with mechanisms of the Commission and human rights treaty bodies. Therefore, the work of the working group had been successfully completed in this area.

78. Mr. Sorabjee stated that habeas corpus had been the most effective safeguard for life and liberty. Its absence during several months of state of emergency proclaimed in India in [illegible]7 had resulted in a number of arbitrary detentions and various abuses of basic human rights. He was of the opinion that military tribunals should not take the place of non-military courts during periods of emergency, since a court should be an impartial and independent court of justice. This was particularly important because habeas corpus and similar procedures were often the most effective way to protect other rights which could not be derogated from in any circumstances, including a state of emergency. These considerations should be taken into account by the Committee in the process of revising its general comment on article 4.

79. Mr. Guissé pointed out that, even though the term "habeas corpus" did not exist in the francophone African legal system, the principle was applied. For example, constitutions provided detainees with guarantee mechanisms by making detention measures transparent and reducing their length. Similar procedures should also be taken into account in any revision of the general comment on article 4.

IV. MEASURES TO BE TAKEN TO GIVE FULL EFFECT TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

80. Ms. Warzazi noted the adoption of the Statute for the International Criminal Court which would have jurisdiction in the punishment of the crime of genocide. In the light of this, Mr. Eide suggested that the working group address issues pertaining to the administration of justice within the framework of the activities of the International Criminal Court.

81. In the light of the proposals made, the Chairman-Rapporteur suggested that the title of the agenda item should be amended to read "Action to combat genocide: from the 1948 Convention to the International Criminal Court, review and prospects".

V. JUVENILE JUSTICE

82. Mr. Joinet said that, as Ms. Lucy Gwanmesia had not been re-elected as a member of the Sub-Commission, she had been unable to submit a working paper on the topic. He drew attention to Economic and Social Council resolution 1997/30 on the administration of juvenile justice. He stressed the need for better coordination of the activities of the Sub-Commission with those of the Commission on Crime Prevention and Criminal Justice and between their respective secretariats, so as to avoid duplication of their work and to enable each to benefit from the others' experience.

83. Mr. Alfonso Martínez supported this suggestion. However, he drew the attention of the group to the differences between the terms of reference of relevant organs and entities and the large number of activities involved. Coordination of pertinent activities should be further encouraged, described and taken into account by the working group.

84. The representative of the secretariat stated that, in compliance with Economic and Social Council resolution 1997/30 a Coordination Panel on Technical Advice and Assistance in Juvenile Justice was established. The first meeting of the Panel took place on 25 and 26 June 1998 and was opened by the High Commissioner for Human Rights. At the meeting the Office of the High Commissioner for Human Rights presented its preliminary survey on technical advice and assistance under the Convention on the Rights of the Child. In addition, the meeting provided a good framework to establish a link between the work of the Plan of Action regarding its mandate and follow-up of the recommendations of the Committee on the Rights of the Child addressed to States parties, including in the area of juvenile justice. Members of the Panel would take appropriate measures and coordinate their action to establish new and reinforce existing technical assistance projects in the area of juvenile justice. The members of the Panel would review the draft training manual on juvenile justice. At the country level, UNICEF representatives would follow up the recommendations made by the Committee following its consideration of State party reports during its seventeenth and eighteenth sessions, especially in the field of juvenile justice. In view of the many ongoing initiatives in this area, the working group decided to delete this item from its agenda.

VI. PRIVATIZATION OF PRISONS

85. At the first meeting, the Chairman-Rapporteur introduced this agenda item, which had been on the agenda since 1989, by going over the background to it for the benefit of newly-elected members of the working group:

> At its forty-first session, by decision 1989/110, the Sub-Commission had requested Mr. Miguel Alfonso Martínez to prepare a working paper which would contain proposals on the best way for the Sub-Commission to study further the issue of privatization of prisons and to submit the working paper to it at its forty-second session;
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> At its forty-third, forty-fourth and forty-fifth sessions respectively, the Sub-Commission had had before it the working paper submitted by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/56), a working paper submitted by the Secretary-General (E/CN.4/Sub.2/1992/21) and an outline prepared by Mrs. Claire Palley (E/CN.4/Sub.2/1993/21);

At its forty-fifth session, the Sub-Commission had, in its decision 1993/109, requested the Commission on Human Rights to authorize the Sub-Commission at its forty-sixth session to appoint one of its members to undertake a special study;

At its fiftieth session, by decision 1994/103, the Commission had requested the Sub-Commission to reconsider its decisions to recommend new studies and related efforts, including the study mentioned above. The Commission had also decided that it was unnecessary or premature to make any determination on those studies and related efforts and had requested the Sub-Commission to present its recommendations to the Commission at its fifty-first session;

The Sub-Commission had taken no decision on the question at its forty-sixth or forty-eighth sessions;

At its forty-ninth session, the Sub-Commission, in its resolution 1997/26, had decided to request its parent bodies to authorize it to appoint Mr. Ali Khan as special rapporteur in order to undertake an in-depth study on all issues relating to the privatization of prisons, including the obligation to respect and implement the legislation in force in the country concerned and the possible civil responsibility of enterprises and their employees, a study which should be completed in time for consideration by the Sub-Commission at its fifty-second session.

86. The Chairman then read out an excerpt from Commission on Human Rights resolution 1998/32 in which the Commission had requested the Sub-Commission to reconsider its recommendation to appoint a special rapporteur on the privatization of prisons. The Chairman-Rapporteur wondered whether that resolution covered the principle of the study itself or simply the appointment of a rapporteur. Mr. Alfonso Martínez believed that the latter was the case and that the item should therefore be kept on the working group's agenda.

87. Mr. Guissé underlined the importance of the question of privatization of prisons, which involved the abandonment of public service activities linked specifically with the functions of the State. Mr. Alfonso Martínez also supported this point of view and suggested continuing the consideration of this issue.

88. Mr. Zhong Shukong stated that prisons were part of the State structure. This issue needed to be reviewed, but this did not mean approval of the privatization of prisons.

89. The Chairman-Rapporteur suggested that Mr. Alfonso Martínez prepare an annually updated working paper on the privatization of prisons. Both Mr. Alfonso Martínez and the working group approved the suggestion.

90. Ms. Warzazi wondered whether the agenda item should not be broadened to cover other aspects relating to prisons. For example, the working group could look more carefully into the idea of making the material conditions of prisoners, which were linked with the country's level of development, as a separate issue and concentrating on violations of the integrity of the

individual (ill-treatment in all its forms), which, by definition, were unrelated to the country's level of development. She suggested that the NGO Observatoire international des prisons, which had the advantage of dealing with all categories of prisoners, including customary-law prisoners, should be approached in that connection. She asked the Chairman-Rapporteur to make the necessary contacts.

91. At the suggestion of the Chairman-Rapporteur, it was then decided to postpone discussion of the item until the end of the session, so as to accord priority to and, if possible, given the time available, complete consideration of the preliminary draft convention on forced disappearance.

92. At the second meeting, the Chairman-Rapporteur informed the working group that he had contacted Observatoire international des prisons, as suggested by Ms. Warzazi. The Chairman of that organization had sent the working group a memorandum containing the following proposals, subject to consultation with its Executive Council and availability of the necessary funding:

(a) Draw a clearer distinction between prisons in developed countries and those in developing countries, particularly the poorest of those countries;

(b) Adopt a consistently firm stance towards physical or mental ill-treatment, but take account of the poverty factor in assessing prison conditions;

(c) Accord much greater importance to children's issues: child detainees; children born and raised in prison with their detainee mother; visiting rooms where children saw their parents detained in degrading conditions.

VII. RECOGNITION OF GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS PERPETRATED ON THE ORDERS OF GOVERNMENTS OR SANCTIONED BY THEM AS AN INTERNATIONAL CRIME

93. Mr. Joinet referred to Commission on Human Rights decision 1996/105, by which the Commission decided to postpone the decision on forwarding to the Economic and Social Council the draft decision of the Sub-Commission authorizing the preparation of a report on the subject in order to be able to take into account the work of other United Nations bodies in this field, including that of the International Law Commission. A relevant request was sent to this Commission but the Commission had not replied. In view of the above, the working group decided to delete this item from the agenda.

VIII. PROVISIONAL AGENDA FOR THE NEXT SESSION

94. At its fifth session, the working group considered the provisional agenda for the next session. The Chairman-Rapporteur drew the attention of the group to the wish of Mr. Fix Zamudio to undertake a study entitled "Improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international

level". The working group agreed that to this end, an additional item with the same title be included in the provisional agenda for the next session, and requested Mr. Fix Zamudio to prepare a working paper on this subject for the next session.

95. At its 3rd meeting, the working group adopted the following provisional agenda for its next session:

1. Election of officers.

2. Adoption of the agenda.

3. Issues related to the deprivation of the right to life, with special reference to:

   (a) Imposition of the death penalty;

   (b) Summary, arbitrary and extrajudicial executions.

4. Privatization of prisons.

5. Action to combat genocide: from the 1948 Convention to the International Criminal Court, results and prospects.

6. Improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international level.

7. Provisional agenda for the next session.

8. Adoption of the report of the working group to the Sub-Commission.

IX. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

96. At its 5th meeting, on 17 August 1998, the working group unanimously adopted the present report to the Sub-Commission.

Annex

DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL PERSONS FROM FORCED DISAPPEARANCE

PREAMBLE

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Taking into account that any act of forced disappearance of a person constitutes an offence to human dignity, is a denial of the purposes of the Charter and is a gross and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and reaffirmed and developed in other international instruments in this field,

In view of the fact that any act of forced disappearance of a person constitutes a violation of the rules of international law guaranteeing the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment,

Considering that forced disappearance undermines the deepest values of any society committed to the respect of the rule of law, human rights and fundamental freedoms, and that the systematic or widespread practice of such acts constitutes a crime against humanity,

Recognizing that forced disappearance violates the right to life or puts it in grave danger and denies individuals the protection of the law,

Taking into account the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations,

Recalling the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States Parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, and the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Affirming that, in order to prevent acts that contribute to forced disappearances it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly on 15 December 1989,

Taking into account also the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,

Wishing to increase the effectiveness of the struggle against forced disappearances of persons throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, forced disappearance is considered to be the deprivation of a person's liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person.

2. This article is without prejudice to any international instrument or national legislation that does or may contain provisions of broader application, especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to at paragraph 1 of this article.

Article 2

1. The perpetrator of and other participants in the offence of forced disappearance or of any constituent element of the offence, as defined in article 1 of this Convention, shall be punished. The perpetrators or other participants in a constituent element of the offence as defined in article 1 of this Convention shall be punished for a forced disappearance where they

knew or ought to have known that the offence was about to be or was in the process of being committed. The perpetrator of and other participants in the following acts shall also be punished:

(a) Instigation, incitement or encouragement of the commission of the offence of forced disappearance;

(b) Conspiracy or collusion to commit an offence of forced disappearance;

(c) Attempt to commit an offence of forced disappearance; and

(d) Concealment of an offence of forced disappearance.

2. Non-fulfilment of the legal duty to act to prevent a forced disappearance shall also be punished.

Article 3

1. The systematic or massive practice of forced disappearance constitutes a crime against humanity.

2. Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2 of this Convention, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or massive practice of forced disappearances, however limited the character of their participation.

Article 4

1. The States Parties undertake:

(a) Not to practise, permit or tolerate forced disappearance;

(b) To investigate immediately and swiftly any complaint of forced disappearance and to inform the family of the disappeared person about his or her fate and whereabouts;

(c) To impose sanctions, within their jurisdiction, on the offence of forced disappearance and the acts or omissions referred to in article 2 of this Convention;

(d) To cooperate with each other and with the United Nations to contribute to the prevention, investigation, punishment and eradication of forced disappearance;

(e) To provide prompt and appropriate reparation for the damage caused to the victims of a forced disappearance in the terms described in article 24 of this Convention.

2. No circumstance - whether internal political instability, threat of war, state of war, any state of emergency or suspension of individual guarantees - may be invoked in order not to comply with the obligations established in this Convention.

3. The States Parties undertake to adopt the necessary legislative, administrative, judicial or other measures to fulfil the commitments into which they have entered in this Convention.

Article 5

1. The States Parties undertake to adopt the necessary legislative measures to define the forced disappearance of persons as an independent offence, as defined in article 1 of this Convention, and to define a crime against humanity, as defined in article 3 of this Convention, as separate offences, and to impose an appropriate punishment commensurate with their extreme gravity. The death penalty shall not be imposed in any circumstances. This offence is continuous and permanent as long as the fate or whereabouts of the disappeared person have not been determined with certainty.

2. The State Parties may establish mitigating circumstances for persons who, having been implicated in the acts referred to in article 2 of this Convention, effectively contribute to bringing the disappeared person forward alive, or voluntarily provide information that contributes to solving cases of forced disappearance or identifying those responsible for an offence of forced disappearance.

Article 6

1. Forced disappearance and the other acts referred to in article 2 of this Convention shall be considered as offences in every State Party. Consequently, each State Party shall take the necessary measures to establish jurisdiction in the following instances:

(a) When the offence of forced disappearance was committed within any territory under its jurisdiction;

(b) When the alleged perpetrator or the other alleged participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention are in the territory of the State Party, irrespective of the nationality of the alleged perpetrator or the other alleged participants, or of the nationality of the disappeared person, or of the place or territory where the offence took place unless the State extradites them or transfers them to an international criminal tribunal.

2. This Convention does not exclude any jurisdiction exercised by an international criminal tribunal.

Article 7

1. Any State Party on whose territory a person suspected of having committed a forced disappearance or an act referred to in article 2 of this Convention is present shall, if after considering the information at its

disposal it deems that the circumstances so warrant, take all necessary measures to ensure the continued presence of that person in the territory and if necessary take him or her into custody. Such detention and measures shall be exercised in conformity with the legislation of that State, and may be continued only for the period necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary investigation of the facts.

3. When a State, pursuant to this article, gathers evidence of a person's responsibility but does not exercise its jurisdiction over the matter, it shall immediately notify the State on whose territory the offence was committed, informing it of the circumstances justifying the presumption of responsibility, in order to allow that State to request extradition.

Article 8

1. States Parties shall afford one another the greatest measure of legal assistance in connection with any criminal investigation or proceedings relating to the offence of forced disappearance, including the supply of all the evidence at their disposal that is necessary for the proceedings.

2. States Parties shall cooperate with each other, and shall afford one another the greatest measure of legal assistance in the search for, location, release and rescue of disappeared persons or, in the event of death, in the return of their remains.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 of this article, without prejudice to the obligations arising from any treaties on mutual legal assistance that may exist between them.

Article 9

1. No order or instruction of any public authority - civilian, military or other - may be invoked to justify a forced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it. Each State shall prohibit orders or instructions commanding, authorizing or encouraging a forced disappearance.

2. Law enforcement officials who have reason to believe that a forced disappearance has occurred or is about to occur shall communicate the matter to their superior authorities and, when necessary, to competent authorities or organs with reviewing or remedial power.

3. Forced disappearance committed by a subordinate shall not relieve his superiors of criminal responsibility if the latter failed to exercise the powers vested in them to prevent or halt the commission of the crime, if they were in possession of information that enabled them to know that the crime was being or was about to be committed.

Article 10

1. The alleged perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall be tried only in the courts of general jurisdiction of each State, to the exclusion of all courts of special jurisdiction, and particularly military courts.

2. No privileges, immunities or special exemptions shall be granted in such trials, subject to the provisions of the Vienna Convention on Diplomatic Relations.

3. The perpetrators of and other participants in the offence of forced disappearance or the other acts referred to in article 2 of this Convention shall in no case be exempt from criminal responsibility including where such offences or acts were committed in the exercise of military or police duties or in the course of performing these functions.

4. The States Parties guarantee a broad legal standing in the judicial process to any wronged party, or any person or national or international organization having a legitimate interest therein.

Article 11

1. Each State Party shall ensure that any person who alleges that someone has been subjected to forced disappearance has the right to complain to a competent and independent State authority and to have that complaint immediately, thoroughly and impartially investigated by that authority.

2. Whenever there are grounds to believe that a forced disappearance has been committed, the State shall refer the matter to that authority without delay for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

3. Each State Party shall ensure that the competent authority has the necessary powers and resources to conduct the investigation, including powers to compel attendance of the alleged perpetrators or other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention, and of witnesses, and the production of relevant evidence. Each State shall allow immediate and direct access to all documents requested by the competent authority, without exception.

4. Each State Party shall ensure that the competent authority has access, without delay or prior notice, to any place, including those classified as being places of national security or of restricted access, where it is suspected that a victim of forced disappearance may be held.

5. Each State Party shall take steps to ensure that all persons involved in the investigation - including the complainant, the relatives of the disappeared person, legal counsel, witnesses and those conducting the investigation - are protected against ill-treatment and any acts of intimidation or reprisal as a result of the complaint or investigation. Anyone responsible for such acts shall be subject to criminal punishment.

6. The findings of a criminal investigation shall be made available upon request to all persons concerned, unless doing so would gravely hinder an ongoing investigation. However, the competent authority shall communicate regularly and without delay to the relatives of the disappeared person the results of the inquiry into the fate and whereabouts of that person.

7. It must be possible to conduct an investigation, in accordance with the procedures described above, for as long as the fate or whereabouts of the disappeared person have not been established with certainty.

8. The alleged perpetrators of and other participants in the offence of forced disappearance or other acts referred to in article 2 of this Convention shall be suspended from any official duties during the investigation.

Article 12

1. Forced disappearance shall not be considered a political offence for purposes of extradition.

2. Forced disappearance shall be deemed to be included among the extraditable offences in every extradition treaty entered into between States Parties.

3. States Parties undertake to include the offence of forced disappearance among the extraditable offences in every extradition treaty they conclude.

4. Should a State Party that makes extradition conditional on the existence of a treaty receive a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition with respect to the offence of forced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the said offence as extraditable.

6. Extradition shall be subject to the procedures established in the law of the requested State.

Article 13

When a State Party does not grant the extradition or is not requested to do so, it shall submit the case to its competent authorities as if the offence had been committed within its jurisdiction, for the purposes of investigation and, when appropriate, for criminal proceedings, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State requesting extradition.

Article 14

Forced disappearance shall not be considered a political offence, nor related to a political offence, for purposes of asylum and refuge. States Parties to this Convention shall not grant diplomatic or territorial asylum or refugee status to any person if there are substantiated grounds for believing that he or she has taken part in a forced disappearance.

Article 15

1. No State Party shall expel, return (refouler) or extradite a person to another State if there are grounds for believing that he or she would be in danger of being subjected to forced disappearance or any other serious human rights violation in that other State.

2. For the purpose of determining whether such grounds exist, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State in question of situations indicating gross, systematic or widespread violations of human rights.

Article 16

1. No statutory limitation shall apply to criminal proceedings and any punishment arising from forced disappearances, when the forced disappearance constitutes a crime against humanity, in accordance with article 3 of this Convention.

2. When the forced disappearance does not constitute a crime against humanity in accordance with article 3 of this Convention, the statute of limitation for the offence and the criminal proceedings shall be equal to the longest period laid down in the law of each State Party, starting from the moment when the fate or whereabouts of the disappeared person is established with certainty. When the remedies described in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the prescription for the offence of forced disappearance shall be suspended until the efficacy of these remedies has been restored.

3. States Parties shall adopt any legislative or other measures necessary to bring their law into conformity with the provisions of the preceding paragraphs.

Article 17

1. The perpetrators or suspected perpetrators of and other participants in the offence of forced disappearance or the acts referred to in article 2 of this Convention shall not benefit from any amnesty measure or similar measures prior to their trial and, where applicable, conviction that would have the effect of exempting them from any criminal action or penalty.

2. The extreme seriousness of the offence of forced disappearance shall be taken into account in the granting of pardon.

Article 18

1. Without prejudice to articles 2 and 5 of this Convention, States Parties shall prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's forced disappearance, and shall search for and identify such children. As a general rule, the child will be returned to his or her family of origin. Here the best interests of the child must be taken into account and the views of the child shall be given due weight in accordance with the age and maturity of the child.

2. States Parties shall give each other assistance in the search for, identification, location and return of minors who have been removed to another State or held therein. For these purposes, States shall, as needed, conclude bilateral or multilateral agreements.

3. States Parties whose laws provide for a system of adoption shall establish through their national law the possibility of reviewing adoptions, and in particular the possibility of annulment of any adoption which has arisen from a forced disappearance. Such adoption may, however, continue in force if consent is given, at the time of the review, by the child's closest relatives. In any event, the best interests of the child should prevail and the views of the child should be given due weight in accordance with the age and maturity of the child.

4. States Parties shall impose penalties in their criminal law on the abduction of children whose parents are victims of forced disappearance or of children born during their mother's forced disappearance, and on the falsification or suppression of documents attesting to the child's true identity. The penalties shall take into account the extreme seriousness of these offences.

Article 19

States Parties shall ensure that the training of public law enforcement personnel and officials includes the necessary education on the provisions of this Convention.

Article 20

1. Without prejudice to any legal remedies for challenging the lawfulness of a deprivation of liberty, States Parties shall guarantee the right to a prompt, simple and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority that ordered the deprivation of liberty and the authority that carried it out. This remedy, as well as that of habeas corpus and similar remedies, may not be suspended or restricted, even in the circumstances described in article 4, paragraph 2, of this Convention.

2. In the framework of this remedy, and without prejudice to the powers of any judicial authority, judges acting in these cases shall enjoy the power to summon witnesses, to order the production of evidence, and to have unrestricted access to places where it may be presumed that a person deprived of liberty might be found.

3. Any delay to or obstruction of this remedy shall result in criminal penalties.

Article 21

1. States Parties shall establish norms under their national law indicating those officials who are authorized to order the deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating the penalties for officials who do not or refuse to provide information on the deprivation of liberty of a person.

2. Each State Party shall likewise ensure strict supervision, in accordance with a clear chain of command, of all officials responsible for apprehensions, arrests, detentions, police custody, transfers and imprisonment, and of all other law enforcement officials.

3. Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by the competent authorities or persons authorized for that purpose.

4. There shall be no restriction upon or derogation from any of the human rights of persons under any form of deprivation of liberty that are recognized, binding upon or in force in any State pursuant to law, conventions, regulations or custom on the pretext that this Convention does not recognize such rights or that it recognizes them to a lesser extent.

5. Any form of deprivation of liberty and all measures affecting the human rights of a person under any form of deprivation of liberty shall be ordered by, or be subject to the effective control of, a judicial or other competent authority.

6. Competent authorities shall have access to all places where there is reason to believe that persons deprived of their liberty might be found.

Article 22

1. States Parties guarantee that any person deprived of liberty shall be held solely in an officially recognized and controlled place of detention and be brought before a judge or other competent judicial authority without delay, who will also be informed of the place where the person is being deprived of liberty.

2. Accurate information on the deprivation of liberty of any person and on his or her whereabouts, including information on any transfer, the identity of those responsible for the deprivation of liberty, and the authority in whose hands the person has been placed, shall be made immediately available to the person's counsel or to any other persons having a legitimate interest in the information.

3. In every place where persons deprived of liberty are held, States Parties shall maintain an official up-to-date register of such persons. Additionally, they shall maintain similar centralized registers. The information contained in these registers shall be made available to the persons and authorities mentioned in the preceding paragraph.

4. States Parties shall identify who is the responsible person in national law for the integrity and accuracy of the custody record. Without prejudice to the provisions of articles 1, 2 and 3 of this Convention, States Parties shall make it a criminal offence for the responsible person, as defined in national law, to fail to register the deprivation of liberty of any person or to record information which is or should be known to be inaccurate in the custody record.

5. States Parties shall periodically publish lists that name the places where persons are deprived of liberty. Such places must be visited regularly by qualified and experienced persons named by a competent authority, different from the authority directly in charge of the administration of the place.

Article 23

States Parties guarantee that all persons deprived of liberty shall be released in a manner that allows reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and their ability fully to exercise their rights are assured.

Article 24

1. States Parties guarantee, in all circumstances, the right to reparation for the harm caused to the victims of forced disappearance.

2. For the purposes of this Convention, the right to reparation comprises restitution, compensation, rehabilitation, satisfaction, and the restoration of the honour and reputation of the victims of the offence of forced disappearance. The rehabilitation of victims of forced disappearance will be physical and psychological as well as professional and legal.

3. For the purposes of this Convention, the term "victim of the offence of forced disappearance" means the disappeared person, his or her relatives, any dependant who has a direct relationship with her or him, and anyone who has suffered harm through intervening in order to prevent the forced disappearance or to shed light on the whereabouts of the disappeared person.

4. In addition to such criminal penalties as are applicable, the acts referred to in articles 2 and 3 of this Convention shall render the State liable under civil law, and the State may bring an action against those responsible in order to recover what it has had to pay, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

PART II

Article 25

1. There shall be established a Committee against Forced Disappearance (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in a personal and independent capacity. Membership of the Committee is incompatible with any post or function subject to the hierarchical structure of the executive authority of a State Party. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate not more than two persons from among its own nationals.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least eight months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties, the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. The United Nations shall be responsible for the expenses incurred by the application of this Convention.

Article 26

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. With the approval of the General Assembly, the members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide in the light of the importance of the functions of the Committee.

Article 27

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. In connection with the submission of the first report of each State Party concerned, the Committee may make a visit to the territory under the control of that State Party. The State Party concerned shall provide all the necessary facilities for such a visit including the entry into the country and access to such places and meeting with such persons as may be required for carrying out the mission of the visit. Thereafter the States Parties shall submit supplementary reports at the request of the Committee.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such comments, observations and recommendations as it may consider appropriate and shall forward the said comments, observations and recommendations to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments, observations and recommendations made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 33. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 28

1. If the Committee receives reliable information which appears to it to contain well-founded indications that forced disappearance is being systematically or widely practised in the territory under the control of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make an inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to the territory under its control. At least one member of the Committee, who may be accompanied if necessary by interpreters, secretaries and experts, shall be responsible for conducting the missions which include visits to the territory under the control of the State Party. No member of the delegation, with the exception of the interpreters, may be a national of the State to which the visit is to be made.

4. The Committee shall notify the Government of the State Party concerned in writing of its intention to organize a mission, indicating the composition of the delegation. During its mission the Committee may make such visits as it may consider necessary in order to fulfil its commitments. If one of the two parties so desires, the Committee and the State Party concerned may, before a mission is carried out, hold consultations in order to define the practical arrangements for the mission without delay. The consultations concerning the practical arrangements for the mission may not include negotiations concerning the obligations for a State Party arising out of this Convention.

5. After examining the report submitted by its member or members in accordance with paragraph 2 of this article, the Committee shall transmit its report to the State Party concerned, together with its conclusions, observations and recommendations.

6. After the proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultation with the State Party concerned, include the results of the proceedings together with the conclusions, observations and recommendations in its annual report made in accordance with article 33.

Article 29

A State Party to this Convention may submit to the Committee communications to the effect that another State Party is not fulfilling its obligations under this Convention. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solutions reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

Article 30

1. Any person or group of persons under the jurisdiction of a State Party or any non-governmental organization may submit communications to the Committee concerning a violation of the provisions of this Convention by a State Party.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the author of the communication referred to in paragraph 1 and by the State Party concerned. The Committee may, if it deems it necessary, organize hearings and investigation missions. For these purposes the Committee shall be governed by paragraphs 3 and 4 of article 28.

5. The Committee shall not consider any communications from an individual under this article unless it has been ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The author of the communication has exhausted all domestic remedies. This shall not be the rule if, in the domestic legislation of the State Party, there is no effective remedy to protect the right alleged to have been violated, if access to domestic remedies has been prevented, if the application of the remedies is unreasonably prolonged or if it is unlikely that application of the remedies would improve the situation of the person who is the victim of the violation.

6. The Committee shall hold closed meetings when examining communications under this article.

7. In urgent cases the Committee may request the State Party concerned to take whatever protective measures it may deem appropriate, when there is a need to avoid irreparable damage. When the Committee is carrying out its functions of considering communications submitted to it, the request to adopt such measures and their adoption shall not prejudge its final decision.

8. The Committee shall forward its views to the State Party concerned and to the individual.

Article 31

1. The Committee may undertake any effective procedure to seek and find persons who have disappeared within the meaning of this Convention, either on its own initiative or at the request of a State Party, an individual, a group of individuals or a non-governmental organization.

2. The Committee shall consider inadmissible any request received under this article which is anonymous or which it considers to be an abuse of the right of submission of such requests or to be incompatible with the provisions of this Convention. In no case may the exhaustion of domestic remedies be required.

3. The Committee may, if it decides that this is warranted, appoint one or more of its members to undertake an investigation mission and to report to the Committee urgently. The Committee shall be governed by the provisions of paragraphs 3 and 4 of article 28 of this Convention.

4. The Committee shall discharge this function in a strictly neutral and humanitarian capacity.

Article 32

The members of the Committee and persons accompanying them on mission in the territory of the States Parties referred to in articles 28, 29 and 31 shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 33

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

2. To ensure that its observations and recommendations are followed up, the Committee shall include in the report referred to in paragraph 1 of this article the measures taken by the States Parties to guarantee effective compliance with the observations and recommendations made in accordance with articles 27, 28, 29, 30 and 31 of this Convention.

PART III

Article 34

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 35

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36

1. No State can, at the time of signature or ratification of this Convention or accession thereto, make reservations concerning articles 1 to 24 and article 31 of this Convention, nor make a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 37

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 38

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 34 and 35;

(b) The date of entry into force of this Convention under article 37.

Article 39

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.